UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/Sub.2/1997/SR.18
20 August 1997

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS

SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND
PROTECTION OF MINORITIES

Forty-ninth session

SUMMARY RECORD OF THE 18th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 18 August 1997, at 10 a.m.

Chairman: Mr. BENGOA

CONTENTS

HUMAN RIGHTS OF INDIGENOUS PEOPLES

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND (continued)

CONTEMPORARY FORMS OF SLAVERY

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Sub-Commission at this session will be consolidated in a single corrigendum to be issued shortly after the end of the session.

GE.97-13549 (E)

The meeting was called to order at 10.35 a.m.

HUMAN RIGHTS OF INDIGENOUS PEOPLES

(a) INDIGENOUS PEOPLES AND THEIR RELATIONSHIP TO LAND

(agenda item 7) (continued) (E/CN.4/Sub.2/1997/CRP.1; E/CN.4/Sub.2/1997/15, 17 and Corr.1)

1. Mrs. DAES, Special Rapporteur on the study of the protection of the heritage of indigenous people, introducing the report of the Technical Meeting (E/CN.4/Sub.2/1997/15), said that, in accordance with recommendations contained in her final and supplementary reports (E/CN.4/Sub.2/1995/26 and E/CN.4/Sub.2/1996/22), and with Sub-Commission resolution 1996/37, the Secretary-General had convened a Technical Meeting in Geneva on 6 and 7 March 1997, at which representatives of a number of specialized agencies and intergovernmental bodies working in fields connected with the heritage of indigenous people had held fruitful discussions, considering, inter alia, how they might contribute to her work on the protection of the heritage of indigenous people. All participants had stressed the usefulness of the Technical Meeting, emphasizing the need to coordinate and harmonize efforts in that regard. They had pointed out that the protection of indigenous peoples' control over their knowledge was essential for their survival and for that of humankind as a whole; and had recommended that the principles and guidelines prepared by the Special Rapporteur should be referred to indigenous peoples, Governments, specialized agencies and other intergovernmental organizations, academics, the media and others. Lastly, the participants had recommended that the Special Rapporteur should be entrusted with the task of elaborating the draft mandate and scope of a trust fund to be established by the General Assembly of the United Nations to act, inter alia, as a global agent for the recovery of compensation for indigenous heritage; and that the study of a number of contemporary problems relating to indigenous heritage should continue. In that respect, the concepts of "heritage of humankind" and "national sovereignty", which were not always compatible, should be analysed and duly considered by the Special Rapporteur, the Sub-Commission and the Commission on Human Rights.

2. The report of the Technical Meeting was now submitted to the Sub-Commission for consideration. In its decision 1997/112, the Commission on Human Rights had recommended that the Special Rapporteur should be entrusted with a continuing mandate to exchange information with all parts of the United Nations system involved in activities concerned with the heritage of indigenous people, with the main purpose of facilitating cooperation and coordination and of promoting the full participation of indigenous people in those efforts. That recommendation by the Commission had been approved by the Economic and Social Council at its most recent session.

3. Mr. EIDE said that when, in his capacity as its Chairman, he had declared open the first session of the Working Group on Indigenous Populations, on 9 August 1982, he could scarcely have envisaged what an important forum it was to become over the ensuing 15 years; or that 9 August would later be observed each year as International Day of the World's Indigenous People. The Working Group had been established on an initiative

taken by himself, with strong support from the then Director of the Centre for Human Rights, Mr. Theo van Boven, in 1981. At the outset, he had taken a controversial decision that had turned out to be of great significance. Reflecting on its mandate to review developments affecting the human rights of indigenous peoples, he had concluded that the experts best qualified to provide information on that subject would be the representatives of indigenous people themselves. Hitherto, only organizations enjoying consultative status with the Economic and Social Council had been permitted to address United Nations bodies. However, as very few indigenous organizations had had such status at that time, he had decided that all relevant indigenous organizations, irrespective of their consultative status, should be permitted to attend and address the Working Group. That decision had undoubtedly contributed to making the Working Group the most important international forum for indigenous peoples.

4. Some Governments had initially shown considerable reluctance to countenance the Working Group's activities, particularly as from the outset it had become very active and creative. As those Governments had associated that activity with his own role as its Chairman, he had lost his seat in the Sub-Commission when he had stood for re-election in 1984. Learning of his defeat, he had been seriously worried about the future of the Working Group - worries that had proved groundless when Mrs. Daes had taken over its chairmanship and steered it into an even more dynamic stage.

5. The Working Group's impact on consciousness-raising had been tremendous. Settler communities from Europe had had to face up to very dark aspects of their history in the "New World", whether in the Americas, Australia or New Zealand. They had become aware of periods of persecution bordering on genocide in some places, and of widespread discrimination and inferiorization in other places, some of which had continued until very recent times. One example was the forcible abduction of children from their aboriginal parents in Australia, a practice which had continued until the 1960s and which had finally been brought fully to light in a report by the Australian Human Rights Commission published in May 1997 entitled The Stolen Generation. The Prime Minister of Australia had offered a personal apology for those events, but had fallen short of offering an official apology.

6. The Working Group's impact on legislation and on administrative practice had also been substantial. Of great importance, both symbolically and in practical terms, had been the landmark decision of the High Court of Australia in the Mabo v. Queensland case, in which the longstanding doctrine of terra nullius had finally been denounced as discriminatory. Indeed, it was a racist doctrine, as was pointed out by the Special Rapporteur in paragraph 24 of her working paper (E/CN.4/Sub.2/1997/17). That case was particularly significant in that it contributed to a worldwide recognition of traditional land rights - a process now under way in many countries. Over the past two years, he had chaired a Norwegian committee of experts reviewing developments in international and comparative law on the land rights of indigenous peoples, which had concluded that there was a worldwide trend towards greater justice in that regard. It had observed that even the World Bank had become more concerned to ensure that indigenous peoples' land rights were given due recognition in its development projects. In the case of Norway, a public commission had proposed a comprehensive change in the management of lands and

natural resources inhabited by the indigenous Saami population. If implemented, the plan would significantly increase their influence over the land in which they lived. Also of great significance had been the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169), so far the only legally binding international instrument dealing with indigenous peoples' land rights. Along with Guatemala and Mexico, Norway was one of the few countries that had so far ratified the Convention, which, he was convinced, would in due course prove a great asset in the advancement of the recognition of those rights.

7. As usual, progress was to some extent offset by a backlash. In Australia, the Native Title Act adopted in the wake of the Mabo v. Queensland case had been subjected to considerable obstruction on legalistic and other grounds. Similarly, one of the Norwegian political parties was trying to mobilize political support against the changes proposed by the Public Commission on Saami Rights. Nevertheless, discrimination was declining and awareness of the issue was resulting in the necessary legislative and administrative changes.

8. Against that background, the study on land rights being prepared by Mrs. Daes was to be welcomed. The outline contained in her preliminary working paper (E/CN.4/Sub.2/1997/17) was convincing, and would guide the Sub-Commission to a more comprehensive knowledge of the processes under way worldwide. He would be pleased to keep her abreast of developments in that regard in countries such as Norway and Finland.

9. More and more Governments were recognizing the importance of the Working Group, and understood that a permanent international forum for indigenous peoples was needed. They recognized that Governments had often failed to represent those peoples' interests, that an international forum could bring to the surface concerns marginalized at national level, and that, furthermore, such a forum would help make Governments ensure that the interests of all segments of the population were promoted. It was thus his hope that the Working Group would continue to exist, that a permanent international forum would be established, and that the long-term result would be the development of pluralistic, socially just national societies in which indigenous people could take charge of their own concerns and participate in the larger society on an equal footing.

10. Mr. ALFONSO MARTÍNEZ said that over the past 15 years the Working Group on Indigenous Populations had contributed enormously to raising public awareness, both internationally and within national societies, of the need to end blatant discrimination against indigenous peoples in societies where they coexisted with non-indigenous peoples. More and more Governments now candidly acknowledged their past errors in that regard, and recognized the need to end such discrimination.

11. The success of the Working Group was reflected in the results of its fifteenth session, and also in the record number of participants at that session. However, participation on that scale could itself lead to unforeseen problems, causing the Working Group to be a victim of its own success. One of its virtues was its extreme flexibility with regard to the question of participation. However, in recent sessions, that flexibility had resulted in

participation by groups which, in his view, could not be regarded as "indigenous" within the traditionally accepted meaning of the term. The Working Group was thus faced with the difficult task of fine-tuning the issue of participation. Its success meant that it had been used by many groups, especially from Africa and Asia, as a forum in which they had been able to make themselves heard at a time when no other suitable forum had existed. However, the recent establishment of the Working Group on Minorities meant that there was now another forum in which to discuss the problems of many groups who could not properly be described as "indigenous", yet who found themselves oppressed by socially dominant groups no less indigenous than themselves, in consequence of the long-term legacy of colonialism.

12. The use of the Working Group by groups who were not "indigenous" in the strict sense of the term must not, however, be used as an excuse for failing to press ahead with formulation of the draft United Nations declaration on the rights of indigenous peoples. That text must be transmitted to the higher bodies as soon as the inter-sessional Working Group had completed its work on the topic. He was in any case somewhat concerned at the slow progress made by the inter-sessional Working Group on a text which had been submitted to it by the Sub-Commission some four or five years previously.

13. When the idea of a permanent forum for indigenous people had first been mooted, he had had some reservations concerning a body whose mandate, membership, participation and funding had not yet been determined. Paragraphs 156 and 157 of the latest report of the Working Group on Indigenous Populations (E/CN.4/Sub.2/1997/CRP.1) confirmed his impression that much remained to be done in that regard. It was still unclear whether what was needed was an enlarged working group, a deliberative or purely administrative body, or one with jurisdictional capacity. Nor was it clear how its members would be appointed. One thing was clear, however: once it had been established, the permanent forum should constitute a second forum working in parallel with the existing Working Group; the establishment of a permanent forum in no way implied that the Working Group would then be wound up.

14. The Working Group had reached a stage at which it was moving from generalities - of which the draft declaration was the best example - to specific and detailed consideration of indigenous problems, as evidenced by the two studies currently being prepared by Mrs. Daes. Her study on land rights, once completed, would constitute a milestone in the Working Group's work. Her preliminary working paper on indigenous people and their relationship to land (E/CN.4/Sub.2/1997/17) shed valuable light on a concept that non-indigenous populations found it difficult to comprehend: it was impossible to overemphasize the fact that the loss of ancestral lands, which provided not just subsistence but also spiritual sustenance indissolubly bound up with the flora and fauna of a specific locality, was something that could never be compensated for by mass transfers of populations to other lands, of the sort that had taken place in the United States of America in the 1830s, and on countless occasions since. The working paper by Mrs. Daes was an indispensable basis for the Working Group's future work on the topic; and it would be most regrettable if, after 15 years, the Working Group were unable to continue its work on the rights of indigenous peoples - a concept that included, but was not restricted to, the human rights of those peoples.

15. Mr. WEISSBRODT said that the excellent preliminary working paper on indigenous people and their relationship to land prepared by Mrs. Daes (E/CN.4/Sub.2/1997/17)and the successful meeting of the Working Group on Indigenous Populations were major contributions to an increased understanding between indigenous populations and States. Mrs. Daes had analysed and highlighted the unique relationship between indigenous peoples and their land, pointing to the importance of recognizing the very existence of that relationship and had stressed the significance of its collective dimension. The uniqueness of the relationship was reflected in the fact that the continuing dispossession of indigenous lands went hand in hand with an alarming decline in the indigenous population.

16. The paper further discussed the suffering of indigenous peoples as victims of dispossession and expropriation - a serious human rights problem which found its origin in the first encounter of colonial settlers with native communities. The destructive potential of State measures had been aggravated by advancing technology and economic globalization. Dispossession and diminution of indigenous lands had been effected through forced population transfers and coerced relocations, allotment and the conclusion of treaties. In many countries, those expropriations had not only been carried out without the consent of the indigenous peoples, but also without due process of law or just compensation, and sometimes even irrespective of constitutional limits. The paper further highlighted the fact that indigenous peoples in general had no effective recourse to courts or other legal remedy when a State violated or abrogated a treaty. One particular danger they faced was the transfer of land by a Government to profit-making corporations, for the building of highways, deforestation and the construction of dams requiring the flooding of land.

17. The responses by Governments had so far been far from satisfactory. Although there had been some improvements, the problem remained basically unsolved. Many States still failed to recognize the existence of indigenous use, occupancy and ownership of land and also failed to accord to indigenous peoples appropriate judicial capacity and other legal rights in connection with their ownership of land. The study also addressed the use or misuse of claim procedures to deprive indigenous peoples of their rights or their claimed rights to land and resources which actually perpetrated the process of expropriation.

18. The paper made it clear that the survival of the culture of indigenous people depended on guaranteeing them the land and resources needed for sustainable economic development and for a degree of self-sufficiency. Existing indigenous homelands had to be preserved and if necessary, land had to be provided. The paper identified mechanisms for negotiation, such as the Arctic Council as an opportunity for Governments and indigenous peoples to engage in confidence-building, as well as for ongoing and lasting political and legal relationships.

19. In conclusion, he wished to thank Mrs. Daes for a serious, systematic and comprehensive preliminary paper, which constituted a promising foundation for her final working paper. The Sub-Commission should not be reluctant to encourage the Commission on Human Rights to give Mrs. Daes the mandate she needed to complete her study, should that prove necessary.

20. The third progress report (E/CN.4/Sub.2/1996/23) on the study on treaties, agreements and other constructive arrangements between States and indigenous populations, by Mr. Alfonso Martínez focused, inter alia, on a particular facet of the issue of land rights. As Mrs. Daes had pointed out, "where just war could not be waged, treaties were concluded". The report concentrated on several countries in America and Europe, and emphasized the need for respect of treaties and other agreements between States and indigenous peoples, including the application of pacta sunt servanda, a doctrine of customary law requiring treaties to be observed in good faith.

21. The reports of Mr. Alfonso Martínez had undoubtedly made a contribution towards understanding some of the problems encountered by indigenous peoples concerning treaties, agreements and other constructive arrangements. Indeed, Mr. Alfonso Martínez had dispelled the notion prevailing at the outset of the study that treaty violations and related problems were confined to the United States of America; his reports had shown that they were in fact a widespread practice throughout the world. Since Mr. Alfonso Martínez had been very selective as to the States he had examined thus far, one should hope that a larger number of States would be included in the final report. He would therefore encourage Mr. Alfonso Martínez to extend his final report to several more States, so that it would become a real monument in the study of treaties, agreements and other constructive arrangements between States and indigenous populations.

22. Mr. GUISSÉ drew attention to the need for the Working Group on Indigenous Populations to be precise in its deliberations, in order to avoid overlap between existing and future standards. However, a definition of indigenous peoples would be neither useful nor possible for the moment. Any attempt to reach a definition would only lead to complications and contradictions and would have the effect of actually restricting their rights. The deep attachment of indigenous peoples to the land, which he had personally witnessed and which had been pointed out by Mrs. Daes, was a determining factor that could be used to identify, if not define, indigenous peoples. It could also help to clarify the sometimes blurred distinction between indigenous people and minorities. Some form of definition at a later stage of the land rights of indigenous peoples derived from land law and international customary law could be used as a framework for the enjoyment by indigenous peoples of their rights. He could envisage circumstances in which it would be appropriate for indigenous peoples to accept offers of compensation for their land, as long as due process was observed, the consent of the indigenous people was freely given, and a fair level of compensation was agreed upon. He urged members of the Working Group, particularly Mrs. Daes and Mr. Alfonso Martínez, to ignore no part of the world in their survey of the international texts constituting land law and international customary law. A comprehensive review would help to define more clearly the problems posed at the international level and to determine the standards that would govern the relationship between indigenous peoples and the land and their relationship with the population at large.

23. Mr. ALFONSO MARTÍNEZ said that Mr. Weissbrodt had rightly observed that his progress report had been selective, but that was bound to be the case given the vast number of treaties and conventions in existence. He could not possibly have covered every area in the world, and had been obliged to select

representative samples which reflected the widespread and varied nature of the problems. Nor would it be feasible to carry out any new, detailed research before publication of his final report, which he expected to complete before the end of 1997. He had had to exclude, for example, the vast issue of indigenous peoples in the former Soviet Union because of the difficulty in getting hold of documents, as well as constraints of time and resources. It was not his aim to create a "real monument", a term perhaps best reserved for the work of Mr. Josi R. Martínez Cobo, but rather to present a study which would be informative and useful for others in the future.

24. Mr. ALI KHAN said that Mr. Weissbrodt had brought two very important issues into clear focus. The dispossession of indigenous lands without compensation and without due process of law, particularly when the indigenous peoples were also deprived of legal remedies, could not be countenanced. There was a need for the constitutional rights of indigenous peoples to their lands to be recognized. The use of treaties to deprive indigenous peoples of their lands was also a serious matter. The application of pacta sunt servanda was appropriate in such cases; treaties concluded without good faith were, ab initio, null and void.

25. He agreed with Mr. Guissé that any attempt to define the concept of indigenous peoples would be an unrewarding exercise, and that the relationship of indigenous peoples to their lands was a feature that distinguished them from minorities. Such an observation offered a good example of how to approach the problem of distinguishing indigenous peoples from minorities; not by compartmentalizing their rights and obligations, but by looking at the problems facing different groups at various levels.

26. Mrs. DAES, responding to points raised in the discussion, said that, for the moment, the definition of indigenous peoples in the study by Mr. Martínez Cobo, supplemented by the criteria which she had put forward in the Working Group and which had already been discussed by the Sub-Commission, was adequate for the purposes of avoiding overlap between the concepts of indigenous peoples and minorities. Further study would be needed before universally acceptable definitions of the two concepts could be reached.

27. In response to Mr. Fan's question about the source of the figure for the number of indigenous peoples in the world, she said the figure of 300 million had been provided by the World Bank. The two previous Secretaries-General of the United Nations, Mr. Pérez de Cuéllar and Mr. Boutros Ghali, had in fact always used the higher figure of 350 million when discussing the issue of indigenous peoples, on the basis of additional information available to them.

28. She assured all those who had participated in the debate that their comments would be taken into account.

29. The CHAIRMAN said that the Sub-Commission had concluded its consideration of agenda item 7.

CONTEMPORARY FORMS OF SLAVERY (agenda item 6) (E/CN.4/Sub.2/1997/11, 12, 13 and 41; E/CN.4/Sub.2/1997/NGO/10)

30. Mrs. WARZAZI, Chairperson-Rapporteur of the Working Group on Contemporary Forms of Slavery, introducing the report of the Working Group on its twenty-second session (E/CN.4/Sub.2/1997/13), said that a very large number of government observers had attended the Working Group. For the first time, some of the non-governmental organizations (NGOs) present had been sponsored by the United Nations Voluntary Trust Fund on Contemporary Forms of Slavery, and the Chairman and a member of the Fund had also attended at their own expense. For the first time also, a member of the Committee on the Rights of the Child had attended the session and had advocated closer contacts between the two bodies.

31. The Working Group had decided to consider the issues of early marriage, incest and children involved in armed conflicts only every other year to allow NGOs sufficient time for research.

32. The NGOs attending for the first time had reported on violations of women's and children's rights in the Russian Federation, Mongolia, Nigeria and Togo. Other NGOs had again raised the problem of slavery in the Sudan and Mauritania. In general, absent member States had been informed of the content of relevant reports so that they could provide clarifications and engage in a dialogue with the NGOs concerned. As the representative of Mauritania was not in Geneva, the relevant communication had been sent to the Mauritanian Government. The representative of the Sudan had renewed his Government's invitation to the Working Group to visit the Sudan in order to verify the soundness or otherwise of the allegations. The Working Group had decided to refer the matter to the Sub-Commission.

33. The NGO reports had shown that the most vulnerable members of society, women and children, were cruelly exploited by unscrupulous individuals and criminal gangs. Prompt and vigorous action by Governments was essential to ensure that justice was done. New or reinforced legislation was necessary to punish the culprits and appropriate facilities must be provided for the victims to ensure their rehabilitation and reintegration into society.

34. Education, the ideal solution to the problem of child labour, called for a major additional effort by the Governments concerned. International aid had often produced promising results and more projects such as those funded by the ILO, the United Nations Children's Fund (UNICEF), multinationals and NGOs working on behalf of children should be implemented. Close cooperation was necessary between the Working Group, the Voluntary Trust Fund and the ILO International Programme on the Elimination of Child Labour (IPEL), and States and other potential donors should be encouraged to make contributions to the Fund. The Working Group had thanked those government representatives who had provided information regarding national legislation directed against child labour and other initiatives based in many cases on international cooperation.

35. The growing number of Western countries that had adopted laws under which their nationals could be prosecuted for child sex tourism had been

welcomed by the Working Group. The World Tourism Organization and other international tourism organizations had also taken welcome initiatives in that regard.

36. The Working Group had recognized the need for machinery to follow up the Stockholm World Congress against Commercial Sexual Exploitation of Children and had expressed its willingness to contribute to the implementation of the Agenda for Action adopted by the Congress. Concern had been expressed at the use of the Internet for advertising and even encouraging child pornography and prostitution. It was a development that called for urgent action by Governments and the international community. It had also been found that adult pornography was being used by paedophiles and criminal gangs to entice children to engage in pornography and prostitution, an additional disturbing factor that was mentioned in Recommendation 3.

37. The Working Group had welcomed the report by the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/1997/95). Bearing in mind the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography, it had encouraged the working group of the Commission on Human Rights on a draft optional protocol to the Convention on the Rights of the Child dealing with those issues to outline a framework for international cooperation to put an end to such practices. In view of the limited response from government observers on the reasons for their non-ratification of the 1949 Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, the Working Group had requested two NGOs, the International Movement against All Forms of Discrimination and Racism and the Coalition against Trafficking in Women, to prepare a working document for the next session on the desirability of drafting an optional protocol to the 1949 Convention designed to update its content and encourage its ratification.

38. The Working Group had requested the Fund to focus on the question of migrant workers, particularly child and women domestic workers, in its future activities.

39. With regard to the issue of women sex slavery during the Second World War, two representatives of the Asian Women's Fund established in Japan had reported on the Fund's activities on behalf of former "comfort women". Representatives of NGOs and government observers had expressed opposition to the Fund. The representative of Japan had announced that an indemnity of 2 million yen accompanied by a personal letter from the Prime Minister of Japan had been transmitted to seven Korean and eight Philippine women. Following a lengthy debate, the Working Group had decided to take note of the positive steps taken to solve the issue.

40. One government observer said that attention should not be focused exclusively on past events; thousands of women had been the victims of mass rape during recent armed conflicts and it was essential to study ways of preventing a recurrence of such violations.

41. The Working Group had decided to include two new items in the agenda of its next session: paedophilia and the illegal activities of certain religious

and other sects. Certain European countries had set up parliamentary bodies to investigate the activities of sects, which sometimes engaged in criminal practices with total impunity.

42. She urged the Sub-Commission to support the Working Group's recommendations.

43. Mr. YIMER said that the report of the Working Group on Contemporary Forms of Slavery (E/CN.4/Sub.2/1997/13) contained many useful ideas and recommendations. He would highlight those which, in his view, were particularly deserving of endorsement. Recommendation 1 requested the Secretary-General to invite all branches of the media to contribute to the elimination of contemporary forms of slavery. It regretted the lack of public information on the precise content of relevant conventions and recommended that the United Nations Educational, Scientific and Cultural Organization (UNESCO), in cooperation with the Centre for Human Rights, should prepare a simplified presentation of the conventions for local populations.

44. Recommendation 3 urged Governments to prohibit advertising of sex tourism and recommended that States take urgent measures to protect minors from exposure to or involvement in pornography. It invited the Secretary-General, in cooperation with the International Telecommunication Union (ITU), to examine the adverse effect on children of new technology such as the Internet. It also encouraged the reinforcement of measures taken by the World Tourism Organization and tourism professionals to combat sex tourism.

45. Recommendation 7 urged States, pending eradication of the phenomenon of child labour, to adopt measures to protect child labourers from exploitation and to prohibit their employment in hazardous occupations.

46. In Recommendation 9, the Working Group decided to give priority to the question of domestic and migrant workers at its next session. Particular attention was to be given to girl child domestic workers. States were urged to take measures to prohibit and sanction the confiscation of passports belonging to migrant domestic workers. The Working Group strongly condemned unequal treatment of migrant workers and the denial of their human dignity.

47. Recommendation 10 (C) called on States to give priority to the issue of commercial sexual exploitation of women and to initiate a process leading to the adoption of a national agenda for action with a time-frame for its implementation.

48. In Recommendation 11 (A), the Working Group decided to give higher priority to exploring preventive measures for the elimination of violence against women, particularly in situations of armed conflict, and to pay special attention to the next report of the Special Rapporteur on violence against women.

49. Mr. MAXIM said that contemporary forms of slavery were a striking example of how economic, social and cultural rights were being violated in different parts of the world. Prostitution, child labour and other such phenomena existed in many cases because impoverished children and women

depended on them as their only means of survival. Unfortunately, the world seemed to be incapable of marshalling the resources that would allow children to go to school instead of work. Many observer States attending the twenty-second session of the Working Group on Contemporary Forms of Slavery were obviously willing and determined to address the problems discussed but lacked the necessary material and financial resources.

50. The NGOs working in the areas covered by the Working Group's terms of reference deserved the highest praise. They were obviously committed people who gave up their time and money to work in extremely difficult conditions and expose abhorrent practices.

51. He had been pleased to note that a very large number of member States had sent representatives to the session who had taken an active part in the discussions.

52. He was concerned that the Sub-Commission had still not tackled the issue of corruption. Governments gave assurances that they would combat corruption in their own countries, but to do so was beyond them: the police, the judiciary, the business community and Governments themselves were often riddled with corruption. Of the many harmful effects of the phenomenon one of the most disturbing was that those in authority, including the judiciary and the police, turned a blind eye to labour by children as young as four or five years old as a direct result of corruption. Governments seemed unable to deal with the problem, which should find a place on the Sub-Commission's agenda.

53. The situation of women during armed conflicts was still a matter of grave concern. The Sub-Commission could take credit for the fact that public opinion, and therefore Governments, had been alerted to the abuses that took place, but, as the war in the former Yugoslavia had shown, shocking incidents continued to occur and might well do so again in the future.

54. Despite the fact that there would be a draft resolution on the issue, there was a lack of interest, or at any rate a seeming unconcern, about the harmful effects of tourism on human rights: he had in mind not just the issue of child prostitution, but the effects of tourism on the environment. He also agreed that more attention should be paid to the questions of the mass media, paedophilia and sects. It was a matter of concern that some sects, particularly in developed countries, appeared honourable, but in fact indulged in unacceptable practices.

55. Mr. GRAMEGNA (International Organization for Migration) said that in some destination countries there was still a demand for certain categories of foreign labour, which resulted in an increase in irregular and illegal migration. Traffickers in human beings exploited the phenomenon and supplied services to potential migrants for enormous fees. In most cases, they were linked with crime syndicates and were ruthless in their treatment of the migrants. To migrants eager to escape poverty or insecurity it seemed worth while to pay traffickers for fraudulent travel documents, transportation, guided border crossings, accommodation and job brokering. They were, however, provided with misleading information and lured by false promises. They normally entered into long-term debt-bondage, which had to be repaid through the exploitation of their work, whether as forced sex workers, in clandestine

sweatshops or begging on the streets. Disability was not respected: the world had recently learned about the situation of deaf and handicapped illegal migrants living and working in slave-like conditions in an industrial country.

56. Trafficking in human beings was a global business generating huge profits and creating serious problems for the countries involved. Sanctions were lax or non-existent and measures taken to eliminate trafficking were ineffective. The traffic in migrant women and children was showing a particularly disturbing increase. Lured by the promise of well-paid jobs abroad, women were vulnerable to bonded labour, forced prostitution and sexual violence and were sometimes even sold as mail-order brides. The potential consequences for the individual migrant were very grave: at the least they suffered physical and mental abuse and violations of their basic human rights. In other cases they were simply abandoned or even murdered. Their clandestine journeys to the country of destination were dangerous, in conditions that led to the migrants' death.

57. IOM had identified trafficking in migrants - and particularly in women and children - as a priority area for international attention. It concentrated its activities on research to foster understanding and recommend measures to combat trafficking; information dissemination programmes in countries of origin; and technical cooperation between international organizations and Governments to help manage migration. There was also a real need for policy and legislative measures to be harmonized among States. There should be return programmes for migrants who had been stranded or apprehended by the authorities. IOM could also directly assist migrant women and children, enabling them to return home with a sense of dignity and in safety. It was a grim picture: traffic in migrants was a modern form of slavery that had reached critical proportions all over the world.

58. Mr. EIBNER (Christian Solidarity International - CSI) said that his organization had paid over 20 visits to the Sudan since 1992. In June 1997 two representatives of CSI and two journalists had defied the death threats of the National Islamic Front (NIF) regime in Khartoum to travel to a prohibited part of northern Bahr al Ghazal to collect further first-hand evidence of the enslavement of black Africans in the Sudan. They had discovered that on 16 May 1997 raiders belonging to the NIF's Popular Defence Force had attacked several villages, burning homes, schools and two churches. The raiders had also shot dead 24 unarmed civilians, looted grain stores, stolen cattle and enslaved 67 women and children. The representatives of CSI had spoken to a young mother whose 3 elder children, aged between 6 and 10 years, had been seized and whose property had been stolen or burned.

59. The whereabouts of the enslaved children, whose names and ages he could supply, were unknown; but the pattern of their bondage had been well established by CSI's numerous interviews with escaped and redeemed slaves and northern traders. On the forced marches northwards, the women and older children had to carry the booty of their captors. Younger children were generally tied to horses or to the backs of enslaved women. Young children often died or received serious injuries along the way. Boy slaves tended cows and goats, while girls and young women, as well as performing domestic labour, were sexually abused by their masters. Most of the slaves were forced to change their cultural identity and become Arabic-speaking Muslims. They were

given a Muslim name and had to perform Islamic rituals. Many boy slaves were circumcised and girls subjected to ritual genital mutilation. Severe beatings were the norm. CSI estimated that there were tens of thousands of chattel slaves still in bondage in the borderlands between northern and southern Sudan. There was also evidence of the enslavement of black African children in Khartoum itself.

60. Slavery had once been virtually extinct in the Sudan, but it had reappeared as the result of the return of the totalitarian ideology of jihad, according to which communities that resisted the programme of transforming the multi-ethnic and multi-religious country into an Arab Islamic State were punished by death, enslavement or other abuse. The NIF regime used a wide variety of deadly means against unyielding communities, such as bombing civilian targets, razing villages and arbitrarily arresting and torturing dissidents. Such brutal treatment had led to the death of 1.5 million people and the displacement of 5 million, out of a population of 8 million, over the past decade. Such treatment could only be called genocide, in its worst form.

61. The Khartoum regime had failed to fulfil its highly publicized promise in 1996 to facilitate independent investigations into the practice of slavery. Instead, it had issued hysterical denials and striven to censor critics by accusing them of "blasphemy". It hired public relations firms and spread misinformation in vain attempts to discredit anti-slavery campaigners. Meanwhile the NIF's slave raids continued. There was, however, some hope. The banned democratic opposition, representing over 90 per cent of the Sudanese people from both North and South, had urged all Sudanese to resist the NIF's recruitment for slave raids and was actively encouraging Arabs and black Africans to build on grass-roots peace initiatives to return slaves to their families. CSI had helped to redeem over 500 Sudanese slaves, although the NIF was currently patrolling the borderland region to intercept caravans of slaves heading towards freedom. Arab Muslims who had helped the slaves had had their homes burned down and been terrorized by NIF security officers, but they and many others, Christians, Muslims and Animists alike, continued to strive to bring freedom to enslaved women and children.

62. The NIF regime had a clear moral and legal obligation to end its sponsorship of slavery. It was a signatory of the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, article II of which forbade the forcible transfer of children of one group to another group "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group". Commission resolution 1997/59 had urged the Government of the Sudan to put an end to slavery and slavery-like practices. In 1996 CSI had appealed to the United Nations High Commissioner for Human Rights to intervene with the NIF regime to secure the release and return home of eight-year-old Abuk Kwany, who was the slave of Ahmed Ahmed in Naykata, and all other slaves whose locations could be traced. It had repeated that appeal at the fifty-third session of the Commission, but there had been no action. How many more Sudanese women and children would be enslaved and subjected to the accompanying abuses before the United Nations collectively, and member States individually, matched words of condemnation with the appropriate action to end a genocidal crime against humanity? He urged the Sub-Commission to endorse CSI's proposal for the establishment of a slave-tracing programme and invited the members of the Working Group on Contemporary Forms of Slavery to

accompany it to the areas concerned. Proceedings should also be initiated against the NIF regime under article VIII of the Convention on the Prevention and Punishment of the Crime of Genocide.

63. Ms. Kim Son HWI (Liberation) said that some Japanese politicians and scholars claimed that wartime military sex slaves had been professional prostitutes and that there was no evidence to prove that they had been forcibly taken to front-line military brothels. That had been the line taken by the Prime Minister's Office in March 1997; and in June the Japanese representative at the latest session of the Working Group on Contemporary Forms of Slavery had claimed that Japan had already carried out a complete investigation of the issue. In reply, Liberation and Kyosei Renko Chosadan (KRC), an organization dedicated to establishing the truth about forced Korean labour in Japan, wished to point out that access was allowed to only 35 per cent of Japanese national archives, among which KRC believed were documents indicating the direct or indirect involvement of the Japanese Government in establishing and managing military brothels. Moreover, few documents of the former Interior Ministry or the current Home Affairs Ministry, which had controlled the former colonial administration of Korea and of Taiwan before and during the Second World War, were open to the public. The Justice Ministry kept a number of documents relating to military war tribunals, at which some Japanese had been found guilty of forcing women into sexual slavery, including one American woman who had been forced to be a "comfort woman" in Guam. The Justice Ministry refused further access to its records, however, on the grounds that the privacy of war criminals should be protected. In 1993 the Health and Welfare Ministry had admitted to possessing a list of victims of wartime military sexual slavery, but it did not allow access to the list and was unwilling to carry out investigations on the whereabouts of the victims. It also held the names of Koreans who had been forced to provide labour, but only one surviving victim had been allowed to see and confirm his name. Relatives who wanted to do so had been denied access.

64. In the past there had been prosecutions, on the basis of domestic laws, in cases relevant to the issue of military sex slaves. For example, in March 1932 a number of Japanese civilians based in Shanghai had lured 15 Japanese women from Nagasaki, who had been told that they could work as waitresses in Shanghai but who had been put into military brothels. It was unclear how the case had been brought to court, but in March 1937 the Supreme Court had found 10 Japanese civilians guilty. According to the documents compiled by the wartime Consul General of Japan in Shanghai, many Korean women had been taken to the "comfort stations" in Shanghai, having been told that they would work as waitresses. Those involved in forcing them into sexual slavery should have been punished, as in the previous case, since Japan had introduced its Criminal Code in Korea after it had colonized the country in 1905; but Japan did not bother to punish such crimes in Korea. When Japanese women went to China to work as prostitutes for military personnel, the police were allowed to issue them with identity documents only if they were over 21. Japan had taken no such protective measures in the case of Korea. Japan's wartime sexual slavery violated both domestic and international law.

65. The facts always pointed the way to a purification of society and to preventing a repetition of the past. Japan should make public its past history in order to establish true relations with other Asian countries. It should take action to provide free access to all documents relating to its past war crimes and its colonization of Korea. Lastly, she hoped that the Sub-Commission would not consider the "Asian Women's Fund", initiated by the Japanese Government, to be a solution of the issue of military sexual slavery in Japan.

The meeting rose at 1.05 p.m.